Anchor Mining, Inc. *and* United Mine Workers of America. Case 9–CA–34454

August 25, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge, first amended charge, and second amended charge filed by the Union on December 11, 1996, and January 13 and February 24, 1997, the General Counsel of the National Labor Relations Board issued a complaint on February 26, 1997, against Anchor Mining, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although the Respondent filed an answer to the complaint, it withdrew that answer by letter dated July 8, 1997.

On July 28, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On July 30, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, although the Respondent initially did file an answer, the Respondent withdrew its answer to the complaint on July 8, 1997. The Respondent's withdrawal of its answer to the complaint has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true. *See Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times until about July 1, 1996, when it ceased operations, the Respondent, a corporation, was engaged in the mining of coal at a mine site in Ragland, West Virginia. During the 12-month period ending July 1, 1996, the Respondent, in conducting its business operations, purchased and received goods valued in excess of $50,000 from suppliers located in the State of West Virginia who, in turn, purchased and received the same goods at three locations in West Virginia directly from points outside the State of West Virginia. We find that the Respondent, at all material times, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, at all material times, has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of [the Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [the Respondent]), repair and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned and operated by [the Respondent], excluding all coal inspectors, weigh bosses at the mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined by the Act.

Since May 24, 1994, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since that date had been recognized as such by the Respondent. This recognition has been embodied in a collective-bargaining agreement between the Respondent and the Union which is effective from December 16, 1993, to August 1, 1998 (the 1993–1998 agreement). At all material times since May 24, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about July 1, 1996, the Respondent has failed to continue in full force and effect all the terms and conditions of the 1993-1998 agreement by failing to provide health insurance benefits pursuant to article XX of that agreement. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(d), Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to provide contractually required health insurance benefits for its unit employees pursuant to article XX if the 1993–1998 agreement, since about July 1, 1996, we shall order the Respondent to restore the employees' health insurance benefits and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Anchor Mining, Inc., Gilbert, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in full force and effect all the terms and conditions of the 1993–1998 agreement by failing to provide health insurance benefits pursuant to article XX of that agreement for the following unit employees:

> All employees of [the Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [the Respondent]), repair and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned and operated by [the Respondent], excluding all coal inspectors, weigh bosses at the mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the unit employees' contractually required health insurance benefits.

(b) Make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Ragland, West Virginia, copies of the attached notice marked ''Appendix.''[1] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 11, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 25, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in full force and effect all the terms and conditions of the 1993–1998 collective-bargaining agreement with the United Mine Workers of America by failing to provide health insurance benefits pursuant to article XX of that agreement for the following unit employees:

> All employees of [Anchor Mining] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [Anchor Mining], repair and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned and operated by [Anchor Mining], excluding all coal inspectors, weigh bosses at the mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined by the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore our unit employees' contractually required health insurance benefits and WE WILL make them whole by reimbursing them for any expenses ensuing from our unlawful conduct, with interest.

ANCHOR MINING, INC.